

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOHN GLENN GUTHRIE,

*Plaintiff,*

v.

Case No. SA-21-CV-01291-JKP

OCWEN LOAN SERVICING, LLC  
REALHOME SERVICES AND  
SOLUTIONS, INC., ALTISOURCE,  
PREMIUM TITLE, SERVICES –  
TEXAS TITLE, HUBZU.COM,  
DOES 1-50,

*Defendants.*

**ORDER**

Before the Court is Defendant PHH Mortgage Services's (PHH), successor to Ocwen Loan Servicing, Motion to Dismiss pursuant to Federal Rule 12(b)(6). *ECF Nos. 7, 10*. Plaintiff John Glenn Guthrie responded. *ECF No. 9*. Also before the Court is Guthrie's Motion to Quash the Motion to Dismiss and Motion for Discovery and Hearing. *ECF No. 9*. Upon consideration, the Motion to Dismiss is **DENIED** subject to re-filing. Guthrie must file an Amended Complaint **on or before March 1, 2022**. Guthrie's Motion to Quash and Motion for Discovery and Hearing are **DENIED**.

**Legal Standard**

To provide opposing parties fair notice of the asserted cause of action and the grounds upon which it rests, every pleading must contain a short and plain statement of the cause of action which shows the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To satisfy this requirement, the complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to

draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The focus is not on whether the plaintiff will ultimately prevail, but whether that party should be permitted to present evidence to support adequately asserted causes of action. *Id.*; *Twombly*, 550 U.S. at 563 n.8. Thus, to warrant dismissal under Federal Rule 12(b)(6), a complaint must, on its face, show a bar to relief or demonstrate “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Fed. R. Civ. P. 12(b)(6); *Clark v. Amoco Prod. Co.*, 794 F.2d 967, 970 (5<sup>th</sup> Cir. 1986). Dismissal “can be based either on a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Frith v. Guardian Life Ins. Co.*, 9 F. Supp.2d 734, 737–38 (S.D. Tex. 1998). “Thus, the court should not dismiss the claim unless the plaintiff would not be entitled to relief under any set of facts or any possible theory that he could prove consistent with the allegations in the complaint.” *Jones v. Greninger*, 188 F.3d 322, 324 (5<sup>th</sup> Cir. 1999); *Vander Zee v. Reno*, 73 F.3d 1365, 1368 (5<sup>th</sup> Cir. 1996).

A Complaint should only be dismissed under Federal Rule 12(b)(6) after affording every opportunity for the plaintiff to state a claim upon which relief can be granted. *Hitt v. City of Pasadena*, 561 F.2d 606, 608–09 (5<sup>th</sup> Cir. 1977); *see also McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 103 (5<sup>th</sup> Cir. 1995); *Hart v. Bayer Corp.*, 199 F.3d 239, 248 n. 6 (5<sup>th</sup> Cir. 2000). Consequently, when it appears a more careful or detailed drafting might overcome the deficiencies on which dismissal is sought, a Court must allow a plaintiff the opportunity to amend the Complaint. *Hitt v. City of Pasadena*, 561 F.2d at 608–09. Leave to amend is not required, however, when plaintiffs have already pled their “best case.” *Brewster*, 587 F.3d at 768. Whether to grant leave to amend is within the Court’s sound discretion. *U.S. ex rel. Willard v. Humana Health Plan of Tex. Inc.*, 336 F.3d 375, 387 (5<sup>th</sup> Cir. 2003).

### Analysis

Pursuant to Federal Rule 12(b)(6), PHH seeks dismissal of all asserted causes of action on several grounds. PHH's arguments have merit. Review of the operative pleading and the Motion to Dismiss, however, reveals most of the alleged pleading defects may be cured through the filing of an amended complaint with more careful pleading or detailed drafting.

Therefore, the Court will give Guthrie an opportunity to amend the Original Petition to file an Amended Complaint compliant with the Federal Rules of pleading. *See Hitt*, 561 F.2d at 608–09. Guthrie's Amended Complaint must address the alleged deficiencies noted in PHH's Motion to Dismiss. Amendment will provide Guthrie an opportunity to plead his best case and directly address the alleged pleading deficiencies. Failure to cure these deficiencies may result in dismissal of this suit.

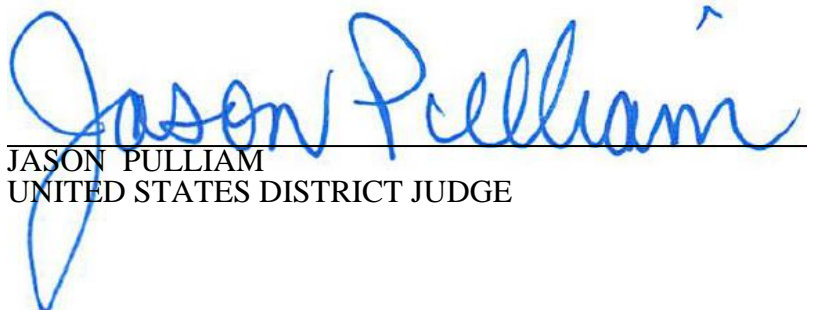
For this reason, PHH's Motion to Dismiss is **DENIED** subject to re-filing. Guthrie must file an Amended Complaint **on or before March 1, 2022**. Failure to file a timely Amended Complaint may result in the dismissal of this suit or some causes of action with prejudice. No extensions of time will be allowed.

### Conclusion

Guthrie's Motion to Quash the Motion to Dismiss and Motion for Discovery and Hearing are **DENIED**.

It is so ORDERED.

SIGNED this 17th day of February, 2022.



JASON PULLIAM  
UNITED STATES DISTRICT JUDGE